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Attorneys for Plaintiff JOHN GUMMOE

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JOHN GUMMOE, an individual, } Case No.: 2:19-cv-00840  
Plaintiff, }  
v. }  
WARNER-TAMERLANE }  
PUBLISHING CORP., a California }  
corporation; ARTISTS RIGHTS }  
ENFORCEMENT CORP., a New York }  
corporation; STEVEN AMES BROWN, }  
an individual; and DOE 1 through DOE }  
20, inclusive, }  
Defendants. }

1 Plaintiff John Gummoe alleges:

2                   **I**

3                   **JURISDICTION**

4         1. This court has subject matter jurisdiction over this action because it  
5 arises under the laws of the United States, 28 U.S.C. § 1331, more particularly,  
6 because it arises under an Act of Congress relating to copyrights, 28 U.S.C. §  
7 1338, namely, the Copyright Act of 1976, as amended, 17 U.S.C. § 101 et seq., and  
8 section 115 in particular, 17 U.S.C. § 115.

9         2. This court has jurisdiction over any claims set forth in this action that  
10 do not arise under the Copyright Act, pursuant to supplemental jurisdiction under  
11 28 U.S.C. § 1337, in that all of the matters herein arise from the same set of  
12 operative facts.

13                   **II**

14                   **PARTIES**

15         3. Plaintiff John Gummoe (“Gummoe”) is an individual residing in the  
16 City of Los Angeles, within the Central District of California.

17         4. Defendant Warner-Tamerlane Music Corp. (“Warner-Tamerlane”) is  
18 a corporation organized under the laws of the State of California and has its  
19 principal place of business in the City of Los Angeles, within the Central District  
20 of California.

21         5. Defendant Artist Rights Enforcement Corp. (“AREC”) is a  
22 corporation organized under the laws of the State of New York and has its  
23 principal place of business in New York City, New York. AREC has had  
24 systematic and continuous contact with California, and, in particular, the County of  
25 Los Angeles, for decades.

26         6. Defendant Steven Ames Brown (“Brown”) is an attorney and a  
27 member of the State Bar of California, and has his principal place of business in  
28 the City of San Francisco, California.

7. Plaintiff sues the defendants identified below as Doe 1 through Doe 20, inclusive, on the grounds that plaintiff is ignorant of the true names and capacities of those fictitiously named defendants. Plaintiff will seek leave of court to amend this complaint when the true names and capacities of those defendants are ascertained.

8. Each of the named defendants was the agent, employee, partner, joint venturer, or co-conspirator of each of the other defendants, and was at all times acting within the purpose and scope of said agency, employment, partnership, joint venture, and conspiracy, and each defendant has ratified and approved the acts of the remaining defendants.

III

## VENUE

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1331 because a substantial part of the events or omissions giving rise to these claims occurred in this judicial district.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1400(a), in that defendant Warner-Tamerlane has its principal place of business in this district.

IV

## **FACTS COMMON TO ALL CLAIMS**

11. Plaintiff realleges paragraphs 1 through 10, inclusive, as if fully set forth.

12. Gummoe is a musician and a songwriter. As of this filing, Gummoe is eighty years of age. In or about 1961, he was one of the founding members of the musical group The Cascades. In 1962, Gummoe wrote and composed the musical composition “Rhythm of the Rain,” which was recorded and released by the musical group The Cascades and became an international hit, achieving chart positions in eighty countries. It has been recorded by numerous other recording artists over the years. In 1999, when Broadcast Music, Inc. (“BMI”), a performing

1 rights organization, published its “Most Performed Songs of the Century” list,  
2 “Rhythm of the Rain” was number nine. Gummoe also wrote and composed a  
3 composition entitled “There’s a Reason,” also recorded and released by The  
4 Cascades. “Rhythm of the Rain” and “There’s a Reason” shall be referred to herein  
5 as the “Compositions.” Gummoe is the sole author of both Compositions.

6       13. “Rhythm of the Rain” was registered in the United States Copyright  
7 Office on November 23, 1962 as number Eu746121, and renewed on July 20,  
8 1990, as number RE485353. “There’s a Reason” was registered in the United  
9 States Copyright Office on June 21, 1962 as number Eu724678, and renewed on  
10 July 20, 1990, as RE485333.

11       14. In 1963 and 1964, Gummoe entered into written agreements with  
12 publishers DeVorzon Music Corp. (“DeVorzon”) and Sherman Music Corporation  
13 (“Sherman”), in which Gummoe conveyed to DeVorzon and Sherman *only* the  
14 original term of the United States copyright in and to the Compositions. During  
15 that time, a copyright lasted for a first term of 28 years from the date it was  
16 secured; thus, Gummoe conveyed to DeVorzon and Sherman copyrights beginning  
17 upon registration in 1962 and ending on December 31, 1990. In or about 1967,  
18 DeVorzon and Sherman assigned their rights to a predecessor of Warner-  
19 Tamerlane.

20       15. During the 1970s, 1980s, and early 1990s, Gummoe did not receive  
21 any royalties from any music publisher for the so-called “writer’s share” of non-  
22 performance royalties, although he did receive the “writer’s share” of public  
23 performance royalties from BMI.

24       16. AREC is a company based in New York, formerly run by Chuck  
25 Rubin, who died in 2018, and which is now run by his daughter, Gabin Rubin.  
26 AREC purports to be a company that helps recording artists and songwriters  
27 recover unpaid royalties and/or other rights. In October 1994, Gummoe entered  
28 into a one-page agreement with AREC (the “AREC Agreement”), in which AREC

1 agreed to act “in connection with investigation into and collection and/or recovery  
2 of any and all artist and/or songwriter royalties and/or other assets which are or  
3 may be due and owing to [Gummoe].” In return for AREC’s services, Gummoe  
4 agreed to pay “an ongoing fifty percent (50%) of all sums and assets which are  
5 recovered as a proximate result of [AREC’s] activities.” A true and correct copy of  
6 the AREC Agreement, dated October 14, 1994, is attached hereto as “Exhibit A.”

7       17. On or about October 25, 1994, Chuck Rubin wrote a letter to Warner-  
8 Tamerlane, in which he claimed that “Mr. Gummoe is asserting both his rights to  
9 receive songwriter royalties from your firm as successor to the original publisher  
10 and to the U.S. renewal terms of his two compositions, ‘There’s a Reason’ and  
11 ‘Rhythm of the Rain.’” A true and correct copy of the October 25, 1994 letter is  
12 attached hereto as “Exhibit B.”

13       18. Shortly thereafter, in connection with AREC’s representation of  
14 Gummoe, AREC arranged for Gummoe to retain Brown to bring an action against  
15 Warner-Tamerlane, DeVorzon, and Sherman. Brown and AREC have a close  
16 relationship; at that time and since that time, Brown has represented AREC in  
17 many civil actions, and has represented recording artists and songwriters who  
18 entered into agreements with AREC. On or about December 27, 1994, Gummoe  
19 entered into a two-page fee agreement with Brown (the “Brown Agreement”), in  
20 which Gummoe agreed to pay to Brown “a fee only from the Recovery, from any  
21 source pertaining to same. Attorney’s share of any such payments is twenty five  
22 percent (25%) of the gross amounts collected hereunder...” An unsigned version of  
23 the Brown Agreement is attached hereto as “Exhibit C,” because Gummoe does  
24 not currently possess a signed copy. Gummoe never met either Brown or Rubin, at  
25 any time.

26       19. AREC and Brown, at that time, had a business arrangement in which  
27 they would split the proceeds from litigation pertaining to AREC clients equally,  
28 and this arrangement also applied to Gummoe.

1       20. On December 29, 1994, Brown filed suit on Gummoe's behalf, in the  
2 United States District Court for the Central District of California, entitled *Gummoe*  
3 *v. Warner-Tamerlane Publishing Corp., et al.*, Case No. 94-8697 ABC (JGx), for  
4 declaratory relief. The suit also included DeVorzon and Sherman as defendants.  
5 The entire suit consisted of approximately two pages of text. A true and correct  
6 copy of that complaint is attached hereto as "Exhibit D."

7       21. The suit was settled quickly. On January 20, 1995, Brown wrote to  
8 Warner-Tamerlane, and confirmed that a deal had been reached in which (1)  
9 Warner-Tamerlane would "purchase the U.S. renewal term of copyright" in the  
10 Compositions; (2) the purchase price would be \$900,000, and (3) Gummoe would  
11 be "recognized as the sole writer for purposes of royalties," that is, the writer's  
12 share of non-performance royalties. A true and correct copy of that communication  
13 is attached hereto as "Exhibit E."

14       22. In early January 1995, Brown also arranged for Gummoe to settle  
15 claims against DeVorzon and Sherman, by means of a two-page written agreement  
16 dated January 10, 1995. Even though DeVorzon and Sherman had been collecting  
17 royalties for decades, royalties that should have been paid to Gummoe, DeVorzon  
18 and Sherman were allowed to "walk away" from the dispute without any payment  
19 to Gummoe, and received a full and final release.

20       23. In late February 1995, a formal written agreement, dated "as of  
21 January 1, 1995," was executed between Gummoe and Warner-Tamerlane (the  
22 "Administration Agreement"). In the Administration Agreement, Warner-  
23 Tamerlane purchased the renewal term of the copyright in and to the  
24 Compositions, and *only* the renewal term of copyright, from Gummoe. The limited  
25 nature of Warner-Tamerlane's rights in and to the United States copyrights is  
26 reflected in the first sentence of the Administration Agreement (prepared by  
27 Warner-Tamerlane) which provides, in pertinent part, that Warner-Tamerlane shall  
28 administrate the Compositions "during the remainder of the renewal term of U.S.

copyright in such compositions..."

24. On or about March 1, 1995, Warner-Tamerlane sent \$900,000 to AREC. On March 2, 1995, AREC sent \$450,000 to Gummoe, and AREC and Brown paid themselves the other \$450,000.

25. Since that time, AREC, and not Gummoe, has received all royalty statements generated and paid by Warner-Tamerlane. AREC then pays Gummoe half of those royalties, and, presumably, pays half of the remaining half to Brown.

V

**FIRST CLAIM FOR  
COPYRIGHT INFRINGEMENT  
(Against Defendant Warner-Tamerlane)**

26. Plaintiff realleges paragraphs 1 through 10, and 12 through 25, inclusive, as if fully set forth.

27. Warner-Tamerlane's rights, with regard to the U.S. copyright, only existed with regard to the renewal term of copyrights in and to the Compositions, which began on January 1, 1991 and ended on December 31, 2018 (on account of the operation of § 305 of the Copyright Act).

28. On January 1, 2019, therefore, Warner-Tamerlane had no further right to exploit the U.S. copyrights in either of the Compositions, but nevertheless continued to do so, without any license or other authority.

29. In exercising dominion over and control of the Compositions, and in continuing to issue licenses for the Compositions and to collect royalties from the exploitation of the Compositions, Warner-Tamerlane has infringed upon the rights of Gummoe in the U.S. copyright.

30. The actions of Warner-Tamerlane that infringed the U.S. copyrights in and to the Compositions have caused damage to Gummoe, in an amount to be proven at trial; Gummoe will elect the remedy provided for in § 504 of the

1 Copyright Act, that, is, either Warner-Tamerlane's gains and profits from the  
2 infringement, or an award of statutory damages.

3 **VI**

4 **SECOND CLAIM FOR**

5 **DECLARATORY RELIEF**

6 **(Against Defendant Warner-Tamerlane)**

7 31. Plaintiff realleges paragraphs 1 through 10, and 12 through 25, as if  
8 fully set forth herein.

9 32. As alleged herein, the Administration Agreement has, at least with  
10 regard to the U.S. copyrights in and to the Compositions, expired as of December  
11 31, 2018.

12 33. Gummoe is informed and believes, and thereon alleges, that Warner-  
13 Tamerlane will not voluntarily relinquish rights in and to the U.S. copyright and  
14 acknowledge that Gummoe, and his publishing company Thunder Rhythm Music,  
15 is the rightful music publisher, as of January 1, 2019.

16 34. Pursuant to 28 U.S.C. §§ 2201 & 2202, a case of actual controversy  
17 within the jurisdiction of this court has arisen and now exists between Gummoe, on  
18 the one hand, and Warner-Tamerlane, on the other, concerning their respective  
19 rights and duties, in that Gummoe contends, based upon the language of the  
20 Administration Agreement and attendant documents, Warner-Tamerlane has  
21 absolutely no further rights in the U.S. copyright in and to the Compositions; that  
22 is, any rights Warner-Tamerlane had in the U.S. copyright for the Compositions  
23 terminated upon the expiration of the renewal terms on December 31, 2018. As  
24 such, Gummoe contends that Warner-Tamerlane must immediately agree to  
25 relinquish the Compositions at BMI and at other collection entities, such as The  
26 Harry Fox Agency, Inc.

27 35. Gummoe desires a judicial determination of his rights, and a  
28 declaration that Warner-Tamerlane lost U.S. rights in and to the Compositions as

1 of December 31, 2018, and may not collect or retain any royalties or revenues  
2 attributable to the exploitation of either of the Compositions, or issue licenses  
3 pertaining to the Compositions, or to exercise any other rights to which a copyright  
4 owner would be entitled.

5       36. Such a judicial determination of the rights and duties of the parties is  
6 necessary at this time, in that Warner-Tamerlane will not voluntarily relinquish the  
7 aforementioned claims, and without a judicial determination, Gummoe believes  
8 that Warner-Tamerlane will continue to assert rights to the U.S. copyright for the  
9 Compositions and impede Gummoe's right to publish the Compositions without  
10 interference, and to collect all monies therefrom.

## 11                     **VII**

### 12                     **THIRD CLAIM FOR** 13                     **DECLARATORY RELIEF**

#### 14                     **(Against Defendants AREC and Brown)**

15       37. Plaintiff realleges paragraphs 1 through 10, and 12 through 25, as if  
16 fully set forth herein.

17       38. Gummoe retained AREC and Brown to make a claim against Warner-  
18 Tamerlane, DeVorzon, and Sherman, and agreed to pay AREC and Brown fifty  
19 percent of all rights and monies recovered.

20       39. In the civil action against Warner-Tamerlane, DeVorzon, and  
21 Sherman, what AREC and Brown "recovered," and *all* that they "recovered," was  
22 the renewal term of copyright in and to the Compositions, which ended on  
23 December 31, 2018, and which AREC and Brown arranged to sell to Warner-  
24 Tamerlane in exchange for \$900,000 and future "writer's royalties."

25       40. Pursuant to the facts set forth above, Warner-Tamerlane is no longer  
26 the publisher of the U.S. copyright in and to the Compositions, and all such rights  
27 have reverted to Gummoe.

28       41. AREC and Brown no longer have any right to collect any revenues

1 from the Compositions, because the rights they allegedly “obtained” for Gummoe  
2 have now ceased to exist.

3       42. AREC and Brown have been extremely well-compensated for the  
4 small amount of work they did for Gummoe in late 1994 and early 1995. For what  
5 amounted to a few hours of legal work, AREC and Brown received \$450,000 in  
6 1995, and royalties every quarter since then, for some *twenty-four years*; this  
7 amount is, upon information and belief, several hundred thousand additional  
8 dollars.

9       43. In 2015, Gummoe contacted Warner-Tamerlane and took the position  
10 that Warner-Tamerlane had no right to the extension term of the U.S. copyright in  
11 “Rhythm of the Rain.” After Chuck Rubin learned of this communication, Rubin  
12 wrote an email to Gummoe on October 23, 2015, in which Rubin confirmed that  
13 “your 1995 assignment [to Warner-Tamerlane]...was only for the US renewal term  
14 which ends in 2018.” But on the issue of whether AREC and Brown should still  
15 receive half of Gummoe’s money from the Compositions *after* 2018, Rubin wrote:  
16 “Our recovery of your copyright interests in 1995 is subject to our contractual  
17 rights to be paid. Our contractual rights to be paid for rendering personal services  
18 are not subject to termination under the Copyright Act.”

19       44. Pursuant to 28 U.S.C. §§ 2201 & 2202, a case of actual controversy  
20 within the jurisdiction of this court has arisen and now exists between Gummoe, on  
21 the one hand, and AREC and Brown, on the other, concerning their respective  
22 rights and duties, in that Gummoe contends that AREC and Brown have already  
23 received all of the money that would be due to them under the AREC Agreement  
24 and the Brown Agreement, that is, AREC and Brown are entitled to no more than  
25 what they actually “obtained” from Warner-Tamerlane, and they “obtained” or  
26 “recovered” no more than that was set forth in the Administration Agreement.  
27 Simply put, when the rights of Warner-Tamerlane ended, so did the rights of  
28 AREC and Brown.

1       45. AREC and Brown, on the other hand, contend that Gummoe must pay  
2 them one-half of anything that Gummoe receives at any time in the present or the  
3 future, with the exception of the “writer’s share” from BMI, which Gummoe has been  
4 receiving since the 1960s. That AREC and Brown are making that claim is not  
5 only supported by the email sent by Chuck Rubin to Gummoe in October 2015, but  
6 also upon the fact that AREC has a long history of suing its clients upon the  
7 slightest questioning of the “rights” that AREC maintains has been assigned to it.  
8 Litigation against clients appears to be one of AREC’s main tools to make sure that  
9 it never ceases to collect any of its various income streams generated from the  
10 creative works of others. In light of AREC’s perennially aggressive stance in such  
11 matters, there is no question that any sort of informal resolution of this matter  
12 would be impossible, and, therefore, judicial resolution of this matter is a  
13 necessity.

14       46. Gummoe desires a judicial determination of his rights, and a  
15 declaration that AREC and Brown may not, as of January 1, 2019, collect or retain  
16 *any* royalties or revenues attributable to the exploitation of either of the  
17 Compositions, throughout the world.

18       47. Such a judicial determination of the rights and duties of the parties is  
19 necessary at this time, in that AREC and Brown will not voluntarily relinquish any  
20 claims that either of them has to continue to collect revenues attributable to the  
21 exploitation of either of the Compositions, throughout the world. Gummoe  
22 believes that AREC and Brown will continue to make such claims and impede  
23 Gummoe’s right to publish the Compositions without interference, and to collect  
24 all monies therefrom, unless a judicial determination is made with respect to those  
25 rights.

26       ///

27       ///

28       ///

WHEREFORE, plaintiff prays for judgment as follows:

1. On the First Claim, for damages for copyright infringement, in an amount pursuant to § 504 of the Copyright Act, to be proven at trial;
2. On the Second Claim, for a judicial declaration that: (a) Warner-Tamerlpane's rights in and to the United States copyrights of the Compositions expired on December 31, 2018, and that Gummoe is, as of January 1, 2019, the owner of all right, title, and interest in the United States copyrights in and to the Compositions;
3. On the Third Claim, for a judicial declaration that: (a) neither AREC nor Brown are entitled to collect any further monies, from any source, including, but not limited to, Gummoe, on account of any exploitation of the Compositions, throughout the world, because the rights of AREC and Brown expired on the same date as the Administration Agreement, that is, December 31, 2018;
4. For costs of suit incurred;
5. For reasonable attorney's fees as part of the costs; and
6. For such other and further relief as the court should deem just and proper.

Dated: February 4, 2019

By: /s/ Evan S. Cohen  
EVAN S. COHEN

Attorney for Plaintiff  
JOHN GUMMOE

1                   **DEMAND FOR JURY TRIAL**

2                   Plaintiff hereby demands a trial by jury.

3

4                   Dated: February 4, 2019

By:    */s/ Evan S. Cohen* \_\_\_\_\_  
5                   EVAN S. COHEN

6                   Attorney for Plaintiff  
7                   JOHN GUMMOE

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